

UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO

In re:

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO,

as representative of

THE COMMONWEALTH OF PUERTO RICO, *et al.*,
Debtors.¹

PROMESA
Title III

No. 17 BK 3283-LTS
(Jointly Administered)

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO,

as representative of

THE COMMONWEALTH OF PUERTO RICO,

Plaintiff,

v.

AMBAC ASSURANCE CORPORATION, *et al.*,

Defendants.

Adv. Proc. No. 20-00003-
LTS

¹ The Debtors in these Title III Cases, along with each Debtor's respective Title III case number and the last four (4) digits of each Debtor's federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (Bankruptcy Case No. 17 BK 3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation ("COFINA") (Bankruptcy Case No. 17 BK 3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority ("HTA") (Bankruptcy Case No. 17 BK 3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico ("ERS") (Bankruptcy Case No. 17 BK 3566-LTS) (Last Four Digits of Federal Tax ID: 9686); (v) Puerto Rico Electric Power Authority ("PREPA") (Bankruptcy Case No. 17 BK 4780-LTS) (Last Four Digits of Federal Tax ID: 3747); and (vi) Puerto Rico Public Buildings Authority ("PBA") (Bankruptcy Case No. 19-BK-5523-LTS) (Last Four Digits of Federal Tax ID: 3801).

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO,
as representative of
THE COMMONWEALTH OF PUERTO RICO,
Plaintiff,
v.
AMBAC ASSURANCE CORPORATION, *et al.*,
Defendants.

Adv. Proc. No. 20-00004-
LTS

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO,
as representative of
THE COMMONWEALTH OF PUERTO RICO,
Plaintiff,
v.
AMBAC ASSURANCE CORPORATION, *et al.*,
Defendants.

Adv. Proc. No. 20-00005-
LTS

**JOINT STATUS REPORT REGARDING DISCOVERY
IN THE REVENUE BOND ADVERSARY PROCEEDINGS**

To the Honorable United States Magistrate Judge Judith Gail Dein:

Ambac Assurance Corporation (“Ambac”), Financial Guaranty Insurance Company (“FGIC”), Assured Guaranty Corp. and Assured Guaranty Municipal Corp. (collectively, “Assured”), and National Public Finance Guarantee Corporation (“National”), The Bank of New York Mellon (“BNYM”), U.S. Bank Trust National Association (“U.S. Bank”, and collectively with Ambac, FGIC, Assured, National, and BNYM, the “Defendants”), and the Financial Oversight and Management Board for Puerto Rico (the “Board”), as Title III representative of the Commonwealth of Puerto Rico (the “Commonwealth”) pursuant to section 315(b) of the Puerto Rico Oversight, Management, and Economic Stability Act (“PROMESA”), and the Government Entities² (together, with Plaintiff, the “Government”), respectfully submit this Joint Status Report in response to the Court’s Order dated February 5, 2021 (ECF No. 15809) concerning discovery in the adversary proceedings (the “Adversary Proceedings”) regarding bonds issued by the Puerto Rico Infrastructure Finance Authority (“PRIFA”), the Puerto Rico Convention Center District Authority (“CCDA”), and the Puerto Rico Highways and Transportation Authority (“HTA”).

JOINT STATUS REPORT

1. This Joint Status Report is submitted pursuant to the Court’s April 19, 2021 Order (ECF No. 16465), which, among other things, ordered the Parties to “file a joint status report on the overall progress of discovery by April 29, 2021.” Pursuant to the deadlines set forth in the Court’s *Order Modifying Discovery Schedule* (ECF No. 16365), the deadline for the Government

² “Government Entities” refers to the Commonwealth’s agencies and instrumentalities on which Defendants served subpoenas in these Adversary Proceedings, including the Puerto Rico Fiscal Agency and Financial Advisory Authority (“AAFAF”), the Puerto Rico Government Development Bank, the Puerto Rico Department of Treasury, HTA, PRIFA, CCDA, and the Puerto Rico Tourism Company. The Commonwealth, by and through the Board, as its Title III representative, in these cases is the “Plaintiff.” Unless otherwise indicated, all ECF numbers referenced herein refer to the docket in Case No. 17 BK 3283-LTS.

to complete its document production was April 26, 2021 and the deadline for the completion of fact discovery is May 19, 2021.

I. THE PARTIES' PROGRESS SINCE THE APRIL 16 JOINT STATUS REPORT³

2. Since the April 16 Joint Status Report, the Parties have continued to exchange correspondence⁴ and met-and-conferred telephonically on April 20, 2021.

A. Document Discovery

3. The Government believes it has responded appropriately to all written discovery propounded by Defendants (including Requests for Documents, Interrogatories and Requests for Admission) and, from the Government's perspective, completed the production of the documents it agreed to produce by the Court's April 26, 2021 deadline. As stated in the Parties' April 16 Joint Status Report, Defendants believe certain documents have been improperly withheld and are moving to compel. The Government disagrees and will oppose Defendants' motion. Further, the Government is filing a motion for a protective order concurrent with Defendants' motion to compel.

4. On April 28, 2021, Defendants sent the Government a letter noting gaps in the Government's production and issues on which Defendants are awaiting a response from the Government. As the Government will explain when it responds to Defendants' letter, the

³ "April 16 Joint Status Report" refers to *Joint Status Report Regarding Discovery in the Revenue Bond Adversary Proceedings* (ECF Nos. 16455, 16560).

⁴ (Ex. A (April 19, 2021 Ltr. from the Government to Defendants); Ex. B (April 19, 2021 Ltr. from Defendants to Government) (the "Defendants' April 19 Letter"); Ex. C (April 20, 2021 Ltr. from Government to Defendants); Ex. D (April 21, 2021 Ltr. from Defendants to Government); Ex. E (April 21, 2021 Ltr. from the Government to Defendants); Ex. F (April 21, 2021 Ltr. from Government to Defendants); Ex. G (April 23, 2021 Ltr. from Defendants to Government); Ex. H (April 26, 2021 Ltr. from Government to Defendants) (the "Government's April 26 Letter"); Ex. I (April 28, 2021 Ltr. from Defendants to Government); Ex. J (Apr. 29, 2021 Ltr. from Government to Defendants).)

Government strongly disagrees with Defendants' assertions. The Parties have not yet met-and-conferred with respect to Defendants' April 28 letter.

5. **Scope of Searches:** On April 6, 2021, the Government Entities provided Defendants with information concerning the searches undertaken by the Government Entities to locate responsive documents, as required by the Court's *Order on Defendants' Motion to Compel Document Discovery from the Government in the Revenue Bond Adversary Proceedings* (the "Motion to Compel Order," ECF No. 16236). On April 14, 2021, Defendants sent the Government a letter suggesting potential additional document custodians and search terms for the Government Entities. On April 19, 2021, following a meet-and-confer, Defendants sent the Government a narrowed list of proposed search terms. The Government is reviewing Defendants' request.

6. Defendants' April 14, 2021 letter also requested an update regarding when the Plaintiff (*i.e.*, the Board, in its capacity as representative of the Commonwealth) would provide disclosures regarding its searches. Defendants contend such disclosures are required under paragraph 1 of the Motion to Compel Order, which ordered the Government (a defined term that included both the Plaintiff and the Government Entities) to provide disclosures, so that Defendants would have an opportunity to suggest additional searches. Defendants state that they have not yet received disclosures from the Plaintiff concerning the searches it has undertaken, as the April 6, 2021 disclosure by its express terms was limited only to the Government Entities, and signed only by counsel for AAFAF; the Plaintiff has provided no similar disclosure. For its part, the Board did not perceive there to be a pending request for it to perform additional searches, beyond those conducted by the Government Entities. The Board is prepared to meet-and-confer on the subject, though it believes it has fully complied with its discovery obligations via the extensive searches undertaken by the Government Entities, working in close coordination

with both the Board and AAFAF. However, to be clear, the Board, in its capacity as Title III representative of the Commonwealth, worked with the Government Entities, including AAFAF, in determining what searches would be done by Commonwealth personnel both before and after issuance of the Motion to Compel Order. The searches undertaken by the Commonwealth, at the request of the Board, are coextensive with those already undertaken and identified.

7. **PRIFAS:** The Court ordered the Government to “provide information about other reports and data that can be generated using PRIFAS.” (Motion to Compel Order at 10.) On April 15, 2021, the Government asked Defendants to identify specific questions and inquiries regarding the PRIFAS data beyond what the Government had already produced. On April 19, 2021, Defendants outlined specific inquiries and requests regarding the PRIFAS data. (Ex. B (Defendants’ April 19 Letter).) The Government is reviewing Defendants’ requests, and in the meantime, on April 26, 2021, the Government produced additional documents that explain how PRIFAS is used.

8. **Privilege Log:** On April 26, 2021, the Government provided a document-by-document privilege log identifying three documents it withheld (or instructed others to withhold) as privileged. (Ex. H (Government’s April 26 Letter).) Defendants are following up with the Government to discuss the scope of the log.

B. Depositions

9. On March 23, 2021, Defendants served notices of their intention to take certain Rule 30(b)(6) depositions. The Government timely served objections to the Rule 30(b)(6) deposition notices. The Parties have met-and-conferred. That process is ongoing. Defendants are awaiting the Government’s proposal on dates and locations that work for the witnesses.

10. As noted in the April 16 Joint Status Report, Defendants intend to notice the depositions of percipient witnesses, once the Parties conclude their discussions regarding

document custodians. As noted above, Defendants are awaiting the Government's response to Defendants' proposal regarding additional custodians. Defendants have not yet identified the witnesses whose depositions they intend to notice, and the Government reserves the right to object to any such deposition.

C. Third-Party Discovery

11. **Subpoenas Directed to Third-Parties:** Defendants have received responsive documents from approximately twenty subpoenaed third-parties, including banks, law firms, accounting firms, and, in the PRIFA Adversary Proceeding, rum producers. A few subpoenaed third-parties have not yet produced responsive documents. Defendants continue to meet-and-confer with several remaining banks, law firms, accounting firms, and rum producers to resolve open issues. The Government is not aware of any claimed open issues, and reserves all rights.

12. On a weekly basis, Defendants provide the Government with copies of the documents produced by the third-parties. Defendants state that they have also provided the formal written responses and objections of third-parties, and copies of all written communications Defendants have had with the law firms that the Government has identified as former law firms for the Government. The Government reserves its rights regarding whether Defendants have provided the Government with all relevant and requested communications they have had with the third-parties who have received subpoenas.

13. Yesterday, April 28, 2021, Defendants received a production regarding audit work papers from KPMG. The Government reviewed this production for privilege in advance of the production to Defendants and, on April 26, 2021, provided a log showing the sole document over which it asserted privilege. (Ex. H (Government's April 26 Letter).) Defendants' review of these materials is ongoing, and Defendants will raise follow-up requests as promptly as possible.

14. **Motion Practice:** Concurrently with this Joint Status Report, and pursuant to the Court's Scheduling Order dated April 23, 2021 (ECF No. 16571), Defendants are filing a motion to compel the production of documents, and the Government is filing a motion for protective order concerning subpoenas Defendants served on law firms that previously (or currently) represent the Government and its related entities.

15. The Parties continue to reserve their respective rights regarding all of the above.

II. PROPOSED NEXT STEPS

16. In light of the status of the Parties' ongoing discussions, it is premature (as of the date of this report) for the Parties to submit any additional disputes to the Court for resolution beyond the motions being submitted today. The Parties would propose to continue to meet-and-confer and to submit a further status report on May 10, 2021.

Dated: April 29, 2021
San Juan, Puerto Rico

FERRAIUOLI LLC

By: /s/ Roberto Cámara-Fuertes
Roberto Cámara-Fuertes (USDC-PR No. 219002)
Sonia Colón (USDC-PR No. 213809)
221 Ponce de León Avenue, 5th Floor
San Juan, PR 00917
Telephone: (787) 766-7000
Facsimile: (787) 766-7001
Email: rcamara@ferraiuoli.com
scolon@ferraiuoli.com

MILBANK LLP

By: /s/ Atara Miller
Dennis F. Dunne (admitted *pro hac vice*)
Atara Miller (admitted *pro hac vice*)
Grant R. Mainland (admitted *pro hac vice*)
John J. Hughes, III (admitted *pro hac vice*)
Jonathan Ohring (admitted *pro hac vice*)
55 Hudson Yards
New York, NY 10001
Telephone: (212) 530-5000
Facsimile: (212) 530-5219
Email: ddunne@milbank.com
amiller@milbank.com
gmainland@milbank.com
jhughes2@milbank.com
johring@milbank.com

Attorneys for Ambac Assurance Corporation

REXACH & PICÓ, CSP

By: /s/ María E. Picó
María E. Picó
(USDC-PR No. 123214)
802 Ave. Fernández Juncos
San Juan, PR 00907-4315
Telephone: (787) 723-8520
Facsimile: (787) 724-7844
Email: mpico@rexachpico.com

BUTLER SNOW LLP

By: /s/ Martin A. Sosland
Martin A. Sosland (admitted *pro hac vice*)
2911 Turtle Creek Blvd., Suite 1400
Dallas, TX 75219
Telephone: (469) 680-5502
Facsimile: (469) 680-5501
Email: martin.sosland@butlersnow.com

James E. Bailey III (admitted *pro hac vice*)
Adam M. Langley (admitted *pro hac vice*)
6075 Poplar Ave., Suite 500
Memphis, TN 38119
Telephone: (901) 680-7200
Facsimile: (901) 680-7201
Email: jeb.bailey@butlersnow.com
adam.langley@butlersnow.cow

Attorneys for Financial Guaranty Insurance Company

**ADSUAR MUNIZ GOYCO SEDA & PEREZ-
OCHOA PSC**

By: /s/ Eric Pérez-Ochoa

Eric Pérez-Ochoa
(USDC-PR No. 206314)
Email: epo@amgprlaw.com

By: /s/ Luis A. Oliver-Fraticelli

Luis A. Oliver-Fraticelli
(USDC-PR No. 209204)
Email: loliver@amgprlaw.com

208 Ponce de Leon Ave., Suite 1600
San Juan, PR 00936
Telephone: (787) 756-9000
Facsimile: (787) 756-9010

WEIL, GOTSHAL & MANGES LLP

By: /s/ Robert S. Berezin

Jonathan D. Polkes (admitted *pro hac vice*)
Gregory Silbert (admitted *pro hac vice*)
Robert S. Berezin (admitted *pro hac vice*)
Kelly DiBlasi (admitted *pro hac vice*)
Gabriel A. Morgan (admitted *pro hac vice*)
767 Fifth Avenue
New York, NY 10153
Telephone: (212) 310-8000
Facsimile: (212) 310-8007
Email: jonathan.polkes@weil.com
gregory.silbert@weil.com
robert.berezin@weil.com
kelly.diblasi@weil.com
gabriel.morgan@weil.com

***Attorneys for National Public Finance
Guarantee Corp.***

CASELLAS ALCOVER & BURGOS P.S.C.

By: /s/ Heriberto Burgos Pérez

Heriberto Burgos Pérez
(USDC-PR No. 204809)
Ricardo F. Casellas-Sánchez
(USDC-PR No. 203114)
Diana Pérez-Seda
(USDC-PR No. 232014)
P.O. Box 364924
San Juan, PR 00936-4924
Telephone: (787) 756-1400
Facsimile: (787) 756-1401
Email: hburgos@cabprlaw.com
rcasellas@cabprlaw.com
dperez@cabprlaw.com

CADWALADER, WICKERSHAM & TAFT LLP

By: /s/ Howard R. Hawkins, Jr.

Howard R. Hawkins, Jr. (admitted *pro hac vice*)
Mark C. Ellenberg (admitted *pro hac vice*)
William J. Natbony (admitted *pro hac vice*)
Thomas J. Curtin (admitted *pro hac vice*)
Casey J. Servais (admitted *pro hac vice*)
200 Liberty Street
New York, NY 10281
Telephone: (212) 504-6000
Facsimile: (212) 504-6666
Email: howard.hawkins@cwt.com
mark.ellenberg@cwt.com
bill.natbony@cwt.com
thomas.curtin@cwt.com
casey.servais@cwt.com

***Attorneys for Assured Guaranty Corp. and
Assured Guaranty Municipal Corp.***

RIVERA, TULLA AND FERRER, LLC

By: /s/ Eric A. Tulla
Eric A. Tulla
(USDC-DPR No. 118313)
Email: etulla@riveratulla.com
Iris J. Cabrera-Gómez
(USDC-DPR No. 221101)
Email: icabrera@riveratulla.com
Rivera Tulla & Ferrer Building
50 Quisqueya Street
San Juan, PR 00917-1212
Telephone: (787) 753-0438
Facsimile: (787) 767-5784

HOGAN LOVELLS US LLP

By: /s/ Ronald Silverman
Ronald Silverman, Esq.
Michael C. Hefter, Esq.
390 Madison Avenue
New York, NY 10017
Telephone: (212) 918-3000
Facsimile: (212) 918-3100
ronald.silverman@hoganlovells.com
michael.hefter@hoganlovells.com

***Attorneys for U.S. Bank Trust National
Association, in its Capacity as Trustee
to PRIFA Bondholders***

SEPULVADO, MALDONADO & COURET

By: /s/ Albéniz Couret Fuentes
Albéniz Couret Fuentes
(USDC-PR No. 222207)
304 Ponce de León Ave. Suite 990
San Juan, PR 00918
Telephone: (787) 765-5656
Facsimile: (787) 294-0073
Email: acouret@smclawpr.com

REED SMITH LLP

By: /s/ Jared S. Roach
Luke A. Sizemore (admitted *pro hac vice*)
Jared S. Roach (admitted *pro hac vice*)
225 Fifth Avenue, Suite 1200
Pittsburgh, PA 15222
Telephone: (412) 288-3131
Facsimile: (412) 288-3063
Email: lsizemore@reedsmith.com
jroach@reedsmith.com

***Attorneys for The Bank of New York Mellon, in
its Capacity as Trustee to CCDA Bondholders***

O'NEILL & BORGES LLC

/s/ Hermann D. Bauer

Hermann D. Bauer
USDC No. 15205
250 Muñoz Rivera Ave., Suite 800
San Juan, PR 00918-1813
Tel: (787) 764-8181
Fax: (787) 753-8944
Email: hermann.bauer@oneillborges.com

PROSKAUER ROSE LLP

/s/ Michael A. Firestein

Martin J. Bienenstock
Jeffrey Levitan
Ehud Barak
(Admitted *Pro Hac Vice*)

Eleven Times Square
New York, NY 10036
Tel: (212) 969-3000
Fax: (212) 969-2900
Email: mbienenstock@proskauer.com
jlevitan@proskauer.com
ebarak@proskauer.com

Michael A. Firestein
Lary Alan Rappaport
(Admitted *Pro Hac Vice*)
2029 Century Park East
Suite 2400
Los Angeles, CA 90067-3010
Tel: (310) 557-2900
Fax: (310) 557-2193
Email: mfirestein@proskauer.com
lrappaport@proskauer.com

***Attorneys for the Financial
Oversight and Management Board,
as Representative of the Commonwealth***

O'MELVENY & MYERS LLP

/s/ Peter Friedman

John J. Rapisardi
(Admitted *Pro Hac Vice*)
7 Times Square
New York, NY 10036
Tel: (212) 326-2000
Fax: (212) 326-2061
Email: jrapisardi@omm.com

Peter Friedman
(Admitted *Pro Hac Vice*)
1625 Eye Street, NW
Washington, DC 20006
Tel: (202) 383-5300
Fax: (202) 383-5414
Email: pfriedman@omm.com

Elizabeth L. McKeen
Ashley M. Pavel
(Admitted *Pro Hac Vice*)
610 Newport Center Drive, 17th Floor
Newport Beach, CA 92660
Tel: (949) 823-6900
Fax: (949) 823-6994
Email: emckeen@omm.com
apavel@omm.com

MARINI PIETRANTONI MUÑIZ LLC

/s/ Luis C. Marini-Biaggi

Luis C. Marini-Biaggi
USDC No. 222301
Email: lmarini@mpmlawpr.com
Carolina Velaz-Rivero
USDC No. 300913
Email: cvelaz@mpmlawpr.com
250 Ponce de León Ave.
Suite 900
San Juan, Puerto Rico 00918
Tel: (787) 705-2173
Fax: (787) 936-7494

***Attorneys for the Puerto Rico Fiscal Agency and
Financial Advisory Authority, as representative of
the Government Entities pursuant to Act 2-2017***

CERTIFICATE OF SERVICE

I hereby certify that on this same date a true and exact copy of this notice was filed with the Clerk of Court using the CM/ECF system, which will notify a copy to counsel of record.

/s/ Roberto Cámara-Fuertes

Roberto Cámara-Fuertes (USDC-PR No. 219002)

221 Ponce de León Avenue, 5th Floor

San Juan, PR 00917

Telephone: (787) 766-7000

Facsimile: (787) 766-7001

Email: rcamara@ferraiuoli.com